Autodie International, Inc., and Progressive Tool and Industries Co., a/k/a PICO *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 2304 and Autodie International In-House Shop Committee, Party in Interest, and Autodie International Employees Labor Organization, Party in Interest. Cases 7–CA–34114 and 7–CA–34387

July 11, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On August 2, 1995, Administrative Law Judge Russell M. King Jr. issued the attached decision. Respondent Autodie International, Inc. (Autodie) and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 2304 (the Charging Party) each filed exceptions and a supporting brief. Respondents Autodie and Progressive Tool and Industries Co. (PICO) filed answering briefs to the Charging Party's exceptions, and the Charging Party filed an answering brief to Respondent Autodie's exceptions. Respondent Autodie and the Charging Party each filed a response to the other's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Autodie International, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(a) and reletter all subsequent paragraphs.

''(a) Rescind the collective-bargaining agreement unlawfully entered into with the Autodie International Employees Labor Organization on April 27, 1993.''

2. Substitute the following for relettered paragraphs 2(c) and (d).

''(c) Within 14 days after service by the Region, post at its facility in Grand Rapids, Michigan, copies of the attached notice marked ''Appendix.''[24] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent Autodie's authorized representative, shall be posted by Respondent Autodie and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Autodie to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Autodie has gone out of business or closed the facility involved in these proceedings, Respondent Autodie shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Autodie at any time since March 25, 1993.

''(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Autodie has taken to comply.''

[1] The parties has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We find no merit in Respondent Autodie's contention that the judge went beyond the issues in dispute to decide whether the employees created a labor organization when they circulated a petition on December 8, 1992, that requested that contract negotiations be conducted with ''an in-house committee and not with'' the UAW or its local. As Respondent Autodie argues in its brief, if a valid labor organization had been created by the December petition, which was signed by a majority of bargaining unit employees, its subsequent recognition in January would have been lawful. Thus, consideration of whether the petition created a valid labor organization was necessary to resolve the issues posed by the complaint.

We agree with the judge that Respondent Autodie's recognition of the Autodie International Employees Labor Organization (AIELO) was unlawful for the additional reason that such recognition was granted within the 60-day notice posting period for an earlier unlawful recognition, which remained unremedied. Member Cohen concludes that Respondent Autodie's recognition of the Autodie International In-House Shop Committee (the Committee) on January 27 violated Sec. 8(a)(2) because the Committee did not have majority support. The parties entered into an informal settlement agreement in that case. However, during the posting period, Respondent Autodie recognized AIELO, essentially the same labor organization as the Committee. Accordingly, the appropriate procedure would be to set aside the settlement. That action would then leave the Board free to find that the recognition of the Committee on January 27 was unlawful. Such unlawful recognition continued when Respondent Autodie recognized AIELO on March 17.

The Charging Party has excepted to the judge's finding that PICO and Autodie are not a single employer. Given that the evidence demonstrates that PICO is at best a tangential player and that the violations found are adequately remedied through Autodie International, Inc., we find it unnecessary to pass on the single employer issue.

[2] We shall order Respondent Autodie to rescind the collective-bargaining agreement it entered into with the unlawfully recognized labor organization.

We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT recognize any union as your representative unless the union has demonstrated that a majority of you support it.

WE WILL NOT recognize the Autodie International In-House Shop Committee, or the Autodie International Employees Labor Organization, or any alter ego of or successor thereto, as your representative unless it shall have demonstrated its majority representative status pursuant to a Board-conducted election.

WE WILL NOT order employees to remove pins or hats displaying union insignia.

WE WILL NOT imply that, even if a majority of you choose to be represented by the UAW, we will not recognize the UAW.

WE WILL NOT make threatening or coercive statements to you because of your support for the UAW or any other union.

WE WILL NOT change your work bay assignments because of your union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the collective-bargaining agreement unlawfully negotiated with the Autodie International Employees Labor Organization on April 27, 1993.

WE WILL, on their request, return employees Edward Dyson, Doug Lamb, and Craig Russell to the work bays to which they were assigned prior to January 21, 1993.

AUTODIE INTERNATIONAL, INC.

A. Bradley Howell, Esq., for the General Counsel.
David B. Gunsberg, Esq., of Bloomfield Hills, Michigan, for Respondent Autodie International, Inc.
Edward J. Plawecki Jr., Esq., of Southfield, Michigan, for Respondent Progressive Tool and Industries Co.
Michael L. Fayette, Esq. (Pinsky, Smith, Fayette & Hulswit), of Grand Rapids, Michigan, for the Charging Party.

DECISION

RUSSELL M. KING JR., Administrative Law Judge. This case was heard in Grand Rapids, Michigan, on October 18 through 21, 1993, on a charge filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 2304 (collectively referred to as the UAW) on January 13, 1993,[1] and amended on February 24 (in Case 7–CA–34114) and on a charge filed by the UAW on March 25 (in Case 7–CA–34387). The Regional Director for Region 7 of the National Labor Relations Board (the Board), on behalf of the Board's General Counsel, issued the complaint in Case 7–CA–34114 on February 24 and, on April 26, issued an order consolidating Cases 7–CA–34114 and 7–CA–34387 and a consolidated amended complaint which was thereafter amended on June 21 and October 18.

At issue is whether agents of Autodie International, Inc. (ADI): (1) improperly provided assistance and support to two different in-house labor organizations, including improperly granting recognition to those organizations even though they did not represent uncoerced majorities of employees in the applicable bargaining unit, in violation of Section 8(a)(2) of the National Labor Relations Act (the Act); (2) uttered coercive remarks aimed at supporters of the UAW; (3) promulgated rules that improperly limited employees' protected concerted activities; and (4) changed the work stations of three employees because of their pro-UAW stance. Also at issue is whether an affiliate of ADI, Progressive Tool and Industries Co. (PICO), is a single employer with ADI.

The following findings of facts and conclusions of law are made on the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed here by counsel for the General Counsel, ADI, PICO, and the UAW.

I. JURISDICTION

ADI, a corporation, with an office and place of business in Grand Rapids, Michigan, commenced operations on about December 24, 1992, and between that date and April 26 (1993) sold and directly shipped goods valued in excess of $50,000 from its Grand Rapids, Michigan facility to General Motors Corporation and Chrysler Corporation facilities within the State of Michigan. Both General Motors Corporation and Chrysler Corporation are enterprises directly engaged in interstate commerce.

PICO, a corporation, with an office and place of business in Southfield, Michigan, during the calendar year ended December 31, 1992, purchased and received at Southfield goods valued at over $50,000 from points located outside of Michigan.

I accordingly conclude that ADI and PICO are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ADI'S FIRST PURPORTED RECOGNITION OF AN IN-HOUSE COMMITTEE

For many years Autodie Corporation (the predecessor of ADI) manufactured dies for the automobile industry. It had only one facility, in Grand Rapids, Michigan. For much of Autodie's existence that Company's hourly shop employees were represented by a labor organization called the Autodie

[1] All dates hereafter are in 1993 unless otherwise indicated.

Employees Labor Organization (the AELO).[2] Then, in December 1991, the employees represented by the AELO voted to have the AELO affiliate with the UAW. That affiliation was accomplished, and the organization became known as UAW Local 2304. Autodie thereafter recognized Local 2304 as the shop employees' exclusive collective-bargaining representative.

But during the summer of 1992 hard times overcame Autodie, and it sought the protection of Chapter 11 of the Bankruptcy Code. On December 23, 1992, ADI purchased the assets of Autodie (with the approval of the bankruptcy court) and continued the same die manufacturing business previously conducted by Autodie Corporation.[3]

Employees had learned of the forthcoming acquisition well in advance of its effective date, and the UAW began negotiations with members of the management of PICO and ADI concerning what the terms and conditions of employment at ADI would be once the acquisition was effected. But on December 8, 1992, ADI received a petition signed by more than 200 of Autodie Corporation's 348 employees that stated that ''we, the undersigned hourly employees request that the contract negotiation [sic] be conducted with an in-house committee and not with the representatives of U.A.W. Local 2304 or the International U.A.W.''

Based on that petition, ADI thereafter refused to recognize Local 2304. No one contends that this refusal to recognize Local 2304 violated the Act in any respect even though, on the effective date of the acquisition (December 23), ADI hired the vast majority of Autodie Corporation's employees. See, e.g., *Maramont Corp*., 317 NLRB 1035 (1995) (an employer is not privileged to continue to recognize a union as its employees' exclusive representative when the employer has objective evidence that the union no longer represents a majority of its employees).[4]

Also based on that petition, on about December 11, 1992, ADI advised Autodie's employees (who were to become ADI's employees 12 days' later) that management had received the employees' petition and that ''an in-house committee would be recognized.''[5] As will be discussed later in this decision, the only time an uncoerced majority of ADI's employees made their wishes regarding union representation known to management was in that December 8 petition. The question, then, is whether ADI's communication to employees on December 11 constituted a valid recognition of a labor organization representing the employees who were to make up ADI's work force.

Let us start by considering a circumstance that did not occur. That is, let us assume that the petition that the employees handed to management on December 8 had read:

> We, the undersigned employees hereby create an in-house union made up of the shop employees of Autodie and request that the contract negotiation be conducted with this union, whose officers we shall subsequently choose, and not with representatives of U.A.W. Local 2304 or the International U.A.W.

Given the language of Section 2(5) of the Act and the Board's interpretation of that provision, under these circumstances it would appear that the employees would have created a labor organization.

Under Section 2(5):

> The term ''labor organization'' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Board interprets ''organization of any kind'' broadly, and requires no formal organization. No constitution or bylaws or officers or payment of dues is needed. E.g., *Columbia Transit Corp*., 237 NLRB 1196 (1978); *S & W Motor Lines*, 236 NLRB 938, 942 (1978); and *Sweetwater Hospital Assn*., 219 NLRB 803 (1975). And in this hypothetical situation, plainly, ''employees'' would ''participate'' and the organization would ''exist[ ] for the purpose . . . of dealing with employers concerning . . . rates of pay, hours of employment, or conditions of work.'' Additionally, again referring to the hypothetical petition, the employees' intent would be clear: A majority of the bargaining unit employees would have intended to create, by their petition, an organization to represent the unit and would have wanted management to bargain with that organization.

All this being the case, had the employees' petition read as stated above, ADI could properly have recognized the in-house committee to which the petition referred since ''the Act does not preclude a company from voluntarily recognizing a union if at the time of recognition, the Union in fact represents a majority of the employees in an appropriate unit.'' *Maramont Corp*., supra at 1044.

Now let us consider the petition that the employees did sign. As stated above, it read:

> We, the undersigned hourly employees request that the contract negotiation be conducted with an in-house committee and not with the representatives of U.A.W. Local 2304 or the International U.A.W.

The question, necessarily, is one of the employees' intent. And on the face of the petition: (1) there is no indication that the employees intended, by the petition, to create a labor organization; and (2) the employees had not yet chosen which ''in-house committee'' they wanted to represent them. (That intent, indeed, is reflected in management's response. Management, on December 11, spoke in terms of recognizing ''an in-house committee.'')

I recognize that the employees' expertise is in producing dies for the automotive industry and not in drafting documents. Thus, one might speculate that in fact the employees meant to communicate just what that hypothetical petition

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[2] The bargaining unit:

> All shop hourly employees employed by Autodie Corporation at its facility located at 44 Coldbrook Avenue, N.W., Grand Rapids, Michigan, but excluding guards and supervisors as defined in the Act.

[3] At the time of the acquisition ADI was named A D Acquisitions, Inc. The name change to Autodie International, Inc. was formally effected on December 26, 1992.

[4] The UAW initially contended that ADI should have bargained with the UAW but later withdrew the portion of its unfair labor practice charge alleging violations of Sec. 8(a)(5).

[5] Tr. 345 (witness Lamb).

states.[6] But nothing in the record shows that to be so. Thus, we are limited to, and must abide by, the language of the petition in discerning the employees' intent. Cf. *Bridgeport Fittings v. NLRB*, 877 F.2d 180, 184 (2d Cir. 1989).

As a result, on December 11, there was no in-house labor organization for management to recognize. Management's grant of recognition accordingly had no effect.

The General Counsel appears to claim that ADI's December 11 grant of recognition to ''an in-house committee'' constituted a violation of Section 8(a)(2) of the Act.[7] But it would appear that, absent a labor organization, there can be no violation of Section 8(a)(2). See *S & W Motor Lines*, supra at 942. In any event, as discussed later in this decision, I find that management subsequently violated Section 8(a)(2). Thus, it would serve no purpose to reach a conclusion about whether ADI violated Section 8(a)(2) on December 11.

III. ADI RECOGNIZES THE AUTODIE INTERNATIONAL IN-HOUSE SHOP COMMITTEE

On about December 30 (1992), announcements appeared on bulletin boards throughout the ADI plant advising that ''nominations will be taken'' on January 5 ''for an in-house shop committee, to form a contract with'' ADI. That was followed on January 5 by posters announcing a January 18 election for three ''committeemen'' and, on January 8, by listings of the names of employees who had agreed to be candidates for committeeman and of employees who had declined to be nominated.

The complaint alleges that ADI committed violations of Section 8(a)(2) by allowing these postings ''on company property.'' But an employer may permit a labor organization to use the employer's bulletin board without thereby violating Section 8(a)(2). It is true that ADI threatened UAW supporters with discipline for attempting to post pro-UAW materials on the Company's bulletin boards, as will be discussed in more detail later in this decision. But, as will also be more fully discussed later, in each such case the UAW postings were made during worktime. And the record fails to show that ADI permitted the In-House Committee to post its announcements during worktime.

The election was held as scheduled on January 18 for three committeemen for the ''Autodie International In-House Shop Committee.'' The employees voted during nonworking time at a neutral location near ADI's facility. Less than a majority of the bargaining unit employees voted—139 employees voted out of 309 employees then in the bargaining unit. The three employees with the largest number of votes were: Jack Brott Sr. (72 votes); Jerry Becker (32 votes); and Brad Westcott (30 votes).

Thirty-one of the ballots were rejected. Each of such ballots, or most, was rejected because it sought representation by the UAW (recall that the specified purpose of the voting was to choose committeemen for the in-house committee) or because the ballot sought to elect former leaders of Local 2304 (all of whom had declined to be nominated for committeeman).

On January 27, 9 days' later, ADI recognized the In-House Shop Committee as the representative of the bargaining unit employees and commenced collective bargaining with Brott, Westcott, and Becker.

By such recognition ADI plainly violated the Act.

Had ADI's statement to employees on December 11 (about bargaining with an in-house union) been a valid recognition of a labor organization, the bargaining that began on January 27 would have been lawful. Under that assumption, after all, the January 18 election would have been merely the choosing of officers for an already existing labor organization. And unions routinely choose officers by a vote of less than a majority of their members. (In fact, the officers of the in-house committee that represented Autodie's employees prior to December 1991 ''were elected by a majority of the people who showed up and voted at the election.'')[8]

But, as stated earlier, that December 11 action by ADI had no effect. Thus, the vote on January 18 had to fulfill two purposes: (1) to determine whether the employees wanted to be represented by the Autodie International In-House Shop Committee; and (2) assuming that the employees did want to be represented by that Committee, who should head it. In order to be effective in respect to that first purpose, a majority of employees had to show their support for the Committee. Since that did not happen, and since the Committee plainly was a ''labor organization,'' ADI's recognition of the In-House Committee violated Section 8(a)(2). *Garment Workers (Bernhard-Altmann) v. NLRB*, 366 U.S. 731 (1961); and *Pan American Grain Co*., 317 NLRB 442 (1995).

IV. THE SECOND IN-HOUSE LABOR ORGANIZATION

Bargaining between ADI and Brott, Westcott, and Becker on behalf of the In-House Shop Committee continued until late February. But on February 24 the complaint in 7–CA–34114 issued alleging, inter alia, that ADI had violated Section 8(a)(2) in recognizing and supporting the In-House Shop Committee. ADI called a meeting of employees that same day at which members of management discussed the complaint, said that the NLRB had asked management not to bargain with the In-House Shop Committee and that ADI would comply with that demand, and said ADI would put into effect some of the contract terms—involving COLA payments and insurance—that had been negotiated with that Committee.

The General Counsel and ADI thereafter agreed to settle the case. That led to a March 3 letter from the Board's Grand Rapids office to the In-House Shop Committee. The letter states, in part:

> We require the signature of the In-House Committee . . . to the Settlement Agreement . . . .
>
> The Regional Director determined that the committee did not represent a majority of employees at the time the Employer granted recognition and started to negotiate with the committee. This means that the Employer must cease recognizing and negotiating with the com-

[6] Thus, ADI contends (Br. 11):

> While the exact name and composition of the negotiating committee was not identified on the petition, all of the employees knew and understood the concept of being represented by an in-house committee and expressed their desire for such representation.

[7] Sec. 8(a)(2) reads, in relevant part:

> It shall be an un fair labor practice for an employer . . . to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

[8] Tr. 379.

> mittee and the committee must be disestablished. . . . What [this] means is that the hourly employees will be unrepresented until such time as a new committee [it will be after the 60 day posting period for the notice] can show majority support to the Employer.[9]

On March 5 Brott (one of the three committeemen) did sign the Agreement and, on the same day, the In-House Shop Committee sent a memorandum to ADI management stating that ''we, the Autodie International Shop Committee will disestablish and cease to negotiate with the Company.''

About that same time Brott spoke to an ADI attorney and to a Board agent about what representational activities employees could take during the 60-day posting period. Brott came away with the belief that, while no representation vote could be scheduled for 60 days, it was permissible to get up another employee petition. Accordingly, on March 8 Brott and others began to circulate a petition that stated:

> We, the undersigned employees of Autodie International Inc., wish to be represented by an in-house committee. This committee to be known as the Autodie International Employees Labor Organization, with committee members Jack Brott, Sr., Brad Westcott and Jerry Becker.

By March 11, a majority (183) of the bargaining unit employees had signed the petition, and Brott presented the petition to ADI management. On about March 17 ADI recognized the Autodie International Employees Labor Organization (the AIELO) as the collective-bargaining representative of the shop employees and, a day or two later, began bargaining with the AIELO. Actually, ''resumed bargaining'' would be a better description than ''began bargaining,'' since the negotiators for the AIELO were the same as those for the In-House Shop Committee and since the bargaining ''picked up'' where the bargaining between ADI and the In-House Shop Committee bargaining had ''left off.''[10]

On April 27, members of management, on behalf of ADI, and Brott, Westcott, and Becker, on behalf of the AIELO, signed a collective-bargaining agreement whose terms ADI put into effect.

My conclusion is that ADI violated Section 8(a)(2) by recognizing and bargaining with the AIELO.

Having unlawfully recognized and bargained with the In-House Shop Committee when that Committee had not shown that it represented a majority of the bargaining unit, ADI could not thereafter recognize and bargain with the In-House Shop Committee even if it subsequently showed itself to have majority support among the employees—at least, not if the showing of majority support followed closely on the heels of ADI's bargaining with the Committee. For—

> the recognition of the minority union . . . was ''a fait accompli depriving the majority of the employees of their guaranteed right to choose their own representative''. . . . It is, therefore, of no consequence that the [labor organization] may have [thereafter] acquired . . . the necessary majority if, during the interim, it was acting unlawfully. Indeed, such acquisition of majority status might indicate that the recognition secured by the [agreement between the employer and the minority union] . . . afforded [the labor organization] a deceptive cloak of authority with which to persuasively elicit additional employee support. [*Bernhard-Altmann*, supra, 366 U.S. at 736 (quoting *Garment Workers v. NLRB*, 280 F.2d 616, 621 (D.C. Cir. 1960)).]

For all practical purposes, the AIELO was the same organization as the In-House Shop Committee. (The General Counsel appropriately terms the AIELO an ''alter ego'' of the In-House Shop Committee.) Thus, since ADI could not have lawfully recognized and resumed bargaining with the In-House Shop Committee had the March employees' petition re-named that Committee as the employees' bargaining representative, ADI violated Section 8(a)(2) when it recognized and bargained with the AIELO.[11]

One of the people who circulated the AIELO petition among employees was a ''night bay leader,'' Nick Lake. The General Counsel contends that Lake was a supervisor within the meaning of Section 2(11) of the Act and that, for this reason too, ADI violated Section 8(a)(2). But Lake had no authority to hire, fire, or discipline employees. And while he was authorized to direct employees in certain respects and to switch them from one task to another, the record fails to show whether the exercise of this authority ''require[d] the use of independent judgment'' (in the words of Sec. 2(11)). Lake also evaluated employees. But the record fails to show what effect his evaluations had on employees. Since it is up to the party claiming supervisory status on the part of an individual to prove it (e.g., *St. Alphonsus Hospital*, 261 NLRB 620, 624 (1982)), I conclude that the General Counsel failed to prove that Lake's participation in the circulation of the AIELO petition violated the Act in any respect.

V. DID ADI ENGAGE IN ANTI-UAW ACTIVITIES

A. *UAW Insignia*

A number of ADI employees wore insignia that displayed these employees' support for the UAW. Much of the time ADI's management ignored such displays. But on three occasions the insignia became an issue.

Supervisor Leo Andrus twice ordered employees to remove pro-UAW pins. On the first such occasion, in late December, employee Craig Russell was wearing a pin that indicated that Russell was a UAW steward.[12] (Russell had in fact served as a steward when the UAW represented the employees of Autodie.) After a customer noticed the pin and questioned Andrus about it, Andrus told Russell to remove it.

Plainly the pin presented an inaccurate message. At the time that this exchange between Andrus and Russell occurred, the UAW did not represent ADI's employees and thus there could be no UAW ''steward'' in the plant. ADI, referring to this circumstance, claims that the pin was con-

[9] G.C. Exh. 10. The latter set of brackets and the material within those brackets are part of the letter as sent to the Committee by the Grand Rapids office.

[10] Tr. 43.

[11] All parties agree that the AIELO is a ''labor organization'' within the meaning of the Act.

[12] In the transcript and the various parties' briefs, this employee's name is alternatively spelled ''Ressell'' and ''Russell.'' The majority view appears to be ''Russell.''

fusing to ADI customers and employees and that this ''special circumstance'' permitted ADI to require Russell to remove it.

But there was no showing whatever that Russell's wearing a steward pin interfered with production or the like. And absent some such impact, Section 7 of the Act plainly guaranteed Russell the right to wear the pin in question. See, e.g., *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 802 (1945); *United Parcel Service*, 312 NLRB 596, 597 (1993), and *Control Services*, 303 NLRB 481, 494 (1991). Thus, Andrus' order to Russell violated Section 8(a)(1).

Andrus also ordered ADI employee Edward Dyson to remove a UAW pin. Andrus claims that Dyson's pin, like Russell's, said, ''steward.'' Dyson testified that the pin said, ''vote UAW.'' In either case, however, ADI violated Section 8(a)(1) of the Act by Andrus' order.

The third occasion, in mid-January, involved a hat. Employee Jim Germain was wearing a UAW hat. Andrus ordered Germain to remove it, saying something like, ''[Y]ou can't wear that hat today because people from PICO are coming by.'' (The relationship between ADI and PICO is discussed at some length in part VII, infra.)

The record is clear that Andrus' only problem with Germain's hat was the UAW insignia on the hat. ADI, indeed, recognizes that Andrus' order to Germain violated Section 8(a)(1). ADI contends, however, that ADI repudiated this unlawful behavior. And Andrus testified that 3 or 4 days' later he apologized to Germain for the incident and told Germain that he was free to wear what ever hat he wanted. But Germain remembered no apology by Andrus, and Germain's testimony was no less credible than Andrus'. I accordingly find that ADI failed to prove that Andrus repudiated his unlawful behavior and conclude that, by Andrus' ordering Germain to remove his UAW hat, ADI violated Section 8(a)(1).

B. *ADI's Response to the Posting of Notices and Other Solicitation Activity*

ADI maintains a number of bulletin boards in areas convenient to bargaining unit employees (generally next to the plant's timeclocks). Everyone agrees that ADI permitted notices concerning the two in-house labor organizations to be posted on these bulletin boards. According to the General Counsel and the UAW, however, on a number of occasions ADI forbade UAW supporters from posting UAW notices on the bulletin boards and threatened UAW supporters with discipline if they failed to abide by this prohibition.

But the supervisor primarily involved, Anthony Astrauskus, testified convincingly that: (1) in each instance that he prevented UAW supporters from posting materials, the employee was seeking to do so at a time when the employee should have been working; and (2) Astrauskus told the employee that the reason the posting was not being allowed was because it was being attempted during worktime. And while Andrus did not testify about any bulletin board incidents, his testimony too shows that the limitation he put on union activity (as opposed to the wearing of union insignia, as discussed above) was that it not be conducted during worktime. (As for employee activities on behalf of the in-house organizations, nothing in the record indicates that management permitted such activities during worktime.)

''Working time is for work.'' *Peyton Packing Co*., 49 NLRB 828, 843 (1943); accord, e.g., *Our Way, Inc*., 268 NLRB 394 (1983). Thus, ADI's response to the notice posting attempts by UAW supporters did not violate the Act in any respect. See *Provincial House Living Center*, 287 NLRB 158 fn. 2 (1987).

Doug Lamb, one of the ADI employees who supported the UAW, testified that Andrus told him that he was not to discuss the UAW anywhere on company property, including the parking lot. Had Andrus said that, that obviously would have been a violation of Section 8(a)(1). See, e.g., *SMI Steel*, 286 NLRB 274, 289 (1987); *Our Way*, supra. But, as noted above, Andrus testified that the only restriction he put on union activity was that it not be conducted when the employee was supposed to be working. I credit Andrus, not Lamb.

Lamb also testified that, on about January 8, Andrus told Lamb that ADI was not going to recognize the UAW and if Lamb found that to be a problem, Lamb could quit. (Andrus knew that Lamb vigorously favored representation by the UAW and that Lamb had a few days before requested that ADI bargain with the UAW—a request that ADI had quite properly rejected.) Both Andrus and Astrauskus testified about a January 8 conversation with Lamb. They said that it concerned Lamb leaving his work station during worktime to make a telephone call. I credit Andrus and Astrauskus in that respect. But I also credit Lamb's testimony about being told that ADI was not going to recognize the UAW and Lamb could quit if he did not like that. I accordingly conclude that ADI thereby violated Section 8(a)(1). The UAW's supporters were entitled to attempt to regain the employees' support for the UAW. But Andrus' remark could reasonably be heard as a statement that ADI would not recognize the UAW even if that union did return to favor among a majority of the bargaining unit employees. That constitutes a violation of Section 8(a)(1). E.g., *General Iron Corp*., 224 NLRB 1180, 1184 (1976). Under the circumstances, Andrus' suggestion that Lamb quit also violated the Act. See *Rolligon Corp*., 254 NLRB 22 (1981).

UAW supporter Dyson testified that on March 5, Andrus questioned Dyson about activities by Dyson—circulating a petition or soliciting votes—on behalf of the UAW and threatened Dyson with discipline. But Andrus testified credibly that while he did ask Dyson ''if he was soliciting [union authorization] cards,'' the conversation was specifically limited to Dyson's activities during worktime. Andrus closed the conversation, he testified, by telling Dyson that what Dyson did ''on his own time was his business, but that I wasn't paying him to walk around the shop.''[13]

I credit Andrus and conclude that ADI did not violate the Act by reason of Andrus' conversation with Dyson on March 5.

VI. THE CHANGED WORK BAY ASSIGNMENTS

Doug Lamb had been president of Local 2304. Ed Dyson and Russell had been stewards of the Local. As discussed earlier, Dyson, Lamb, and Russell were among the most vigorous supporters of the UAW among the ADI employees. At all material times until about January 21 they worked in the same bay at ADI. (Dyson defined a ''bay'' this way: ''really an imaginary division; there's poles that support the roof in the bay area of the shop, the supporting structures and the

[13] Tr. 684, 705.

area in between those supports [are] referred to as 'bays.'''[14] Then, on or about January 21, Autodie transferred Dyson, Lamb, and Russell, each to a different bay.

The complaint alleges that ADI took that action because of the three employees' support for the UAW.

Andrus testified on behalf of ADI about the change in bay assignments. He said that the change was done for normal business reasons having nothing to do with the three employees' support for the UAW; that changes in work locations are routine at ADI; that Dyson, Lamb, and Russell were merely three among 14 employees who were transferred at that time; and that the three were among the group of employees that were transferred because each had special skills that were needed at the new locations. ADI and PICO point out that each of the three employees was told that the change was because of a ''talent shift'' and that the move resulted in no change in hours, or wages, or any other term or condition of employment.

But the testimony of Dyson, Lamb, and Russell paints a different picture. To begin with, the bay they had worked in was not directly observable from any supervisor's office. But the em ployees in each of the bays to which they were transferred could be observed from a supervisor's office. Secondly, ADI's usual practice regarding changes in bay assignments is to give several days' notice to the affected employees. Here, on the other hand, Dyson, Lamb, and Russell were given no notice at all; they were told to pack up their tools and move immediately. Thirdly, according to Dyson, and contrary to Andrus' testimony, the switch in the three employees' locations was not part of any large-scale movement of employees. Fourthly, each of the three employees testified that there was nothing about the work in their new areas that called for their particular expertise. And lastly, Dyson, Lamb, and Russell and the employees who were moved out to make way for them were all in the midst of partially completed projects when the move occurred.

In this instance I credit the testimony of Dyson, Lamb, and Russell over Andrus'. I further find that Andrus was less than entirely forthcoming in his testimony about ADI's reasons for its transfer of the three UAW supporters. More bluntly, I find that Andrus had a reason for the transfers that he did not disclose while testifying.

That raises the question of what was the undisclosed reason for the transfer. In that connection, it is plain that ADI's management, while not rabid on the subject, bore some animus toward the UAW. Andrus said as much to one employee. There were the UAW pin and hat incidents discussed earlier. There was Andrus' statement that ADI would never recognize the UAW and his suggestion that Lamb quit. And there was ADI's haste to recognize a nonexistent in-house labor organization (in December 1992).

We thus have UAW animus on the employer's part, the sudden transfer of three of the most pro-UAW employees, and a withholding by management of the true reason for the transfers. That leads me to the conclusion that the reason for the transfer that Andrus withheld was an unlawful, discriminatory, one stemming from the employees' pro-UAW activities. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); accord, *Southwest Merchandising Corp. v. NLRB*, 53 F.3d 1334, 1340 (1995); *Corella Electric*, 317 NLRB 147 (1995).

I need not determine precisely what management hoped to gain by discriminatorily transferring Dyson, Lamb, and Russell. But the probable reason is the one put forth by the General Counsel and the UAW—management wanted to be in a better position to keep its collective eye on the three. It is true that the evidence shows that at ADI supervisors spend much more time on the shop floor than they do in their offices. Still, it is evident that management can more closely watch employees who are in locations observable from supervisors' offices than employees who are not.

As for whether ADI would have transferred the three employees even had the employees not supported the UAW, that was up to ADI to prove. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). ADI failed to carry that burden.

I accordingly conclude that ADI's transfers of Dyson, Lamb, and Russell violated Section 8(a)(3) and (1) of the Act. *Sage Dining Service*, 312 NLRB 845 (1993).

VII. ARE ADI AND PICO A SINGLE EMPLOYER

The General Counsel and the UAW contend that ADI and PICO are a single employer. ADI and, of course, PICO, deny that that is the case.

The issue is an agonizingly close one. But having considered the evidence and the arguments of the parties I conclude that ADI and PICO are not a single employer.

A. *Factors Pointing Toward Single Employer Relationship*

First, ADI and PICO are owned by many of the same persons, all of whom are members of the same family, and have many common officers, as the following tables illustrate.[15]

Name	*Percent Ownership of PICO*	*Percent Ownership of ADI*
Anthony Wisne	56	0
Joseph Wisne	11	25
Alan Wisne	11	25
Lawrence Wisne	11	25
Toni Wisne	11	25

Name	*Position With PICO*	*Position With ADI*
Anthony Wisne	board chair	—
Lawrence Wisne	president	president
Alan Wisne	vice president	vice president
Joseph Wisne	vice president	vice president
Toni Ann Wisne	vice president	vice president
Robert Stoutenberg	vice president	—
Joseph Digiovanni	vice president	—
Victor Winarski	sec'y-treasurer	sec'y-treasurer
Tom Winters	—	vice president

[14] Tr. 254.

[15] The data are from G.C. Exh. 4.

Name	*Position With PICO*	*Position With ADI*
Norm Veit	—	vice president

Secondly, persons connected with PICO involved themselves in the (unlawful) collective bargaining between ADI and the two in-house committees.[16]

That was particularly true of PICO's director of human resources, Fred Begle. He helped draft proposed ADI collective-bargaining agreements and attended more than half of the collective-bargaining sessions between ADI and the two in-house labor organizations, acting as management's spokesman and chief negotiator. And Robert Stoutenberg, a PICO vice president, kept himself abreast of ADI's collective-bargaining efforts.

Third, PICO officials plainly played major roles in some ADI actions relative to its employees. Begle helped draft an attendance policy that ADI put into place in the spring of 1993. Stoutenberg instituted a task force of ADI employees to help solve problems at the ADI plant.

Fourth, officials of both PICO and ADI made statements and took actions that could reasonably lead ADI's employees to conclude that PICO's management dominated ADI's. Stoutenberg invited ADI's employees to contact him directly via a direct line from ADI. Along with ADI's counsel (Gunsberg), Stoutenberg, and Begle met with ADI employees in February to discuss the NLRB litigation. In the spring of 1993 Begle interviewed ADI's probationary employees in order to get ''feedback.'' And, as discussed in part V, supra, when ADI Supervisor Andrus told employee Germain to remove his UAW hat, Andrus said that the rea son for his order was the presence of PICO officials in the ADI plant.

B. *Factors Suggesting No Single Employer Relationship*

As the term is used by the Board, ADI, and PICO do not have interrelated operations. See, e.g., *Teamster Local 776 (Pennsy Supply)*, 313 NLRB 1148, 1166–1167 (1994); and *Alabama Metal Products*, 280 NLRB 1090, 1097 (1986); compare, e.g., *Silver Court Nursing Center*, 313 NLRB 1141, 1143 (1994); and *Airport Bus Service*, 273 NLRB 561 (1984).

It is true that both companies are in the automotive industry. ADI manufacturers dies and molds. PICO designs and manufactures, inter alia, automated equipment and welding fixtures. As such, PICO utilizes the products of die and mold manufacturers like ADI. This connection led PICO's management to conclude that, by becoming affiliated with ADI, PICO could significantly reduce the time it took PICO to fill its customers' orders.

But that connection is a future one. It did not obtain at the time of the hearing. Rather, the record evidences no actual cooperative operations between the two companies. Additionally, the two companies are over 100 miles apart;[17] they have different business purposes;[18] each company has its own employees and the record does not evidence any interchange among them;[19] ADI does not use equipment owned by PICO (or vice versa);[20] there is no evidence that PICO maintains any office at ADI (or vice versa); there is no evidence that the two companies have payroll or financial records in common;[21] and there is no evidence that PICO and ADI hold themselves out to the public as a single-integrated business.[22]

Nor does PICO ''control'' ADI's labor relations, in the way that the Board uses the term when considering single employer issues. Obviously the Wisne family ''controls,'' in one sense, both ADI and PICO (since that family owns 100 percent of both companies). And the record suggests that the Wisnes wanted members of PICO's management generally to provide ADI with policy guidance and labor relations expertise. But the record fails to show that anyone from PICO hires, fires, disciplines, rewards, promotes, or directs ADI employees or implements any conditions of employment. See, in this connection, *Mohenis Services*, 308 NLRB 326, 330 (1992).

C. *Conclusion—Single-Employer Relationship*

ADI and PICO are commonly owned, and common ownership is one of the elements to be considered in determining whether two companies should be deemed to be a single employer. E.g., *Radio & Television Broadcast Technicans Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255 (1965) (hereafter *Radio Union*); *Mohenis Services*, supra at 329. And ADI and PICO have five officers in common, and common management is another of such elements. E.g., *Radio Union*, supra. But, plainly, common ownership and having some mem bers of management in common are not enough, in themselves, to result in a finding of a single-employer relationship. E.g., *Gartner-Harf Co*., supra; and *Milo Express*, 212 NLRB 313 (1974).

Interrelation of operations is a third element of single employer status. E.g., *Radio Union*, supra. And while the operations of ADI and PICO are not interrelated: (1) there is an obvious connection in the operations of the two companies; and (2) not all of the *Radio Union* elements need be satisfied to demonstrate single employer status. E.g., *Total Property*

[16] Agents of PICO participated in the bargaining with the UAW prior to ADI acquiring Autodie's assets. But I do not consider that that indicates anything about single employer status. See *Gartner-Harf Co*., 308 NLRB 531, 533 (1992). Similarly, I do not consider meaningful the fact PICO employed an Autodie supervisor (Andrus) and an Autodie bay leader during the summer of 1992 (when the Autodie plant was temporarily closed).

[17] Typically two companies in a single employer relationship occupy the same, or adjoining, facilities. E.g., *Acme Bus Corp*., 317 NLRB 887 (1995); *Pan American Grain Co*., 317 NLRB 442 (1995); *Wallace International of Puerto Rico*, 314 NLRB 1244, 1245 (1994); and *George V. Hamilton, Inc*., 289 NLRB 1335, 1338 (1988). That is not necessarily the case. See *Asociacion Hospital del Maestro*, 317 NLRB 485 (1995) (one entity is located at a separate facility which is a ''relatively short driving distance'' from the headquarters of the other entity). But it would be exceedingly unusual, if not unprecedented, to find single employer status in two companies as physically distant from one another as are ADI and PICO.

[18] See *Wilson & Sons Heating*, 302 NLRB 802, 809 fn. 6 (1991).

[19] Compare, e.g., *George V. Hamilton*, supra; *Airport Bus Service*, supra.

[20] Compare, e.g., *Airport Bus Service*, supra.

[21] Compare, e.g., *Silver Court Nursing Center*, supra.

[22] Compare, *Acme Bus Corp*., supra; *Pan American Grain Co*., supra; *Wallace International*, supra; and *Silver Court Nursing Center*, supra.

Services, 317 NLRB 975 (1995); and *Silver Court Nursing Center*, supra.

That brings us to the fourth element: centralized control of labor relations. I know of no case which denied a finding of single employer status in which the officers of one company immersed themselves in the labor relations of another as much as Begle and Stoutenberg did here. (In *Milo Express*, supra, one person dominated the management of both companies. But that individual was president of each of the two companies. Neither Begle nor Stoutenberg held any position with ADI.) But while Begle and Stoutenberg undoubtedly had considerable influence over the way ADI was run, the day-to-day business of ADI, including the supervision of its employees and the implementation of changes in conditions of employment, was controlled and handled by ADI's management; in particular, by ADI supervisors having no position with PICO.

The discussion above touches on one other factor: agents of ADI and PICO said and did things that could reasonably result in employees concluding that PICO's management dominated ADI's. But I am not aware of any case in which the Board held that such a belief on the employees' part is a factor to be weighed in determining single-employer status. In any event, Begle and Stoutenberg did not go so far as to reasonably create the belief that PICO's management involved itself in the day-to-day business of ADI.

''The question in the 'single employer' situation . . . is whether the two nominally independent enterprises, in reality, constitute only *one integrated enterprise*.'' *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1122 (3d Cir. 1982) (emphasis in original). Arguably PICO's participation in ADI's affairs would be sufficient to result in a finding of a single-employer relationship if ADI's operations were interrelated with PICO's. But because of the absence of interrelated operations and because PICO's management left to ADI's officials the supervision of employees and the implementation of the terms and conditions of employment at ADI, I conclude that the two companies are not single employers.

VIII. REMEDY

Having found and concluded that Respondent ADI has committed certain unfair labor practices in violation of Section 8(a)(1), (2), and (3) of the Act, I will recommend that ADI be ordered to cease and desist therefrom, to withdraw and withhold recognition from the Autodie International In-House Committee and Autodie International Employees Labor Organization unless and until any such organization has been certified as the collective-bargaining representative of the employees, and, on their request, to return Lamb, Dyson, and Russell to their former work bays.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

A. The Respondent, Autodie International, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing any labor organization as the representative of any of its employees for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment at a time when such organization has not demonstrated that it is supported by employees constituting a majority of the appropriate bargaining unit.

(b) Recognizing the Autodie International In-House Shop Committee, or the Autodie International Employees Labor Organization, or any alter ego of or successor thereto, as the collective-bargaining representative of its employees unless and until the labor organization shall have demonstrated its majority representative status pursuant to a Board-conducted election among the Company's employees.

(c) Ordering employees to remove pins or hats displaying union insignia.

(d) Implying to employees that Respondent would not recognize the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, even if the UAW were chosen by employees making up a majority of the members of the appropriate bargaining unit as their collective-bargaining representative. The bargaining unit:

> All shop hourly employees employed by Autodie International, Inc. at its facility located at 44 Coldbrook Avenue, N.W., Grand Rapids, Michigan, but excluding guards and supervisors as defined in the Act.

(e) Making threatening or coercive statements to employees because of their support for the UAW or any other labor organization.

(f) Changing the work bay assignments of employees because of their union or other concerted protected activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On their request, return employees Edward Dyson, Doug Lamb, and Craig Russell to the work bays to which they were assigned prior to January 21, 1993.

(b) Post at its facility in Grand Rapids, Michigan, copies of the attached notice marked ''Appendix.''[24] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

B. The complaint against Progressive Tool and Industries Co. is dismissed in its entirety.